

*FCC Received April 5, 1996*  
*Joseph Stimer ss*

ORIGINAL

# FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:	)	MT DOCKET No.:	96-41
	)		
LIBERTY CABLE CO., INC.	)	File Nos:	
For Private Operational Fixed	)	708777	WNTT370
Microwave Service Authorization	)	708778, 713296	WNTM210
and Modifications	)	708779	WNTM385
	)	708780	WNTT555
New York, New York	)	708781, 709426,	WNTM212
	)	711937	WNTM212
	)	709332	(NEW)
	)	712203	WNTW782
	)	712218	WNTY584
	)	712219	WNTY605
	)	713295	WNTX889
	)	713300	(NEW)
	)	717325	(NEW)

C O R R E C T E D   C O P Y

Volume: 1  
Pages: 1 through 52  
Place: Washington, D.C.  
Date: March 26, 1996

## HERITAGE REPORTING CORPORATION

Official Reporters  
1220 L Street, NW, Suite 600  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Suite 201  
FCC Building  
2000 L Street, N.W.  
Washington, D.C.

Tuesday,  
March 26, 1996

The parties met, pursuant to the notice of the  
Judge Richard L. Sippel, at 09:38 a.m.

BEFORE: HON. Richard Sippel  
Administrative Law Judge

APPEARANCES:

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I N D E X

WITNESSES:                      DIRECT    CROSS    REDIRECT    RECROSS    VOIR DIRE  
None.

E X H I B I T S

IDENTIFIED                      RECEIVED                      REJECTED  
Liberty Cable:  
None.

Hearing Began: 9:38 a.m.                      Hearing Ended: 10:46 a.m.

P R O C E E D I N G S

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JUDGE SIPPEL: Good morning. This is a pre-hearing conference, our first pre-hearing conference, in the matter of Liberty Cable Company. This is my first opportunity to speak to the assembled group here and I'm going to ask you first to introduce yourself as counsel, your full counsel complement, starting with the, starting with the Bureau.

MR. WEBER: For Wireless Telecommunications Bureau, Joseph Weber, Katherine Power and Mark Keam.

JUDGE SIPPEL: Okay. Good morning.

MR. KEAM: Good morning.

MS. POWER: Good morning.

JUDGE SIPPEL: And Liberty Cable.

MR. BEGLEITER: Robert Begleiter and Robert Pettit.

JUDGE SIPPEL: Okay. Good morning. And we have, let's see, Time Warner.

MR. BECKNER: Bruce Beckner, Arthur Harding, Chris Wood.

JUDGE SIPPEL: Okay. Fine. And there's one other party.

MR. HOLT: It's Cablevision.

JUDGE SIPPEL: Cablevision, yes.

MR. HOLT: New York City Phase I and Cablevision of Hudson County, Inc., Your Honor. My name is Christopher Holt from the law firm of Mintz, Levin, Cohn, Ferris,

1       Glovsky and Popeo.

2               JUDGE SIPPEL: Thank you, Mr. Holt. Good morning.  
3       I've received a copy of only one notice of appearance. Are  
4       the notices of appearances taken care of or will they be  
5       taken care of?

6               MR. PETTIT: I hope it's ours, Your Honor.

7               JUDGE SIPPEL: Actually, it's not. It's  
8       Mr. Harding's. I mean, that's the only one that's come to  
9       me. I'm not saying that this hasn't been done.

10              MR. BEGLEITER: I have seen them for all the  
11       parties, Your Honor.

12              JUDGE SIPPEL: Have you?

13              MR. BEGLEITER: Yes.

14              JUDGE SIPPEL: All right. So they will get to me  
15       eventually.

16              MR. HOLT: Cablevision's was filed on Friday.

17              JUDGE SIPPEL: On Friday. They'll work their way  
18       to me. That's okay. That's a housekeeping item. All  
19       right. Let me just start off by saying that I want to get  
20       everything, I'm very impressed with the, with the joint  
21       report that came in and I'm prepared to rule. I want to get  
22       these items that you've outlined firmed up as best as  
23       possible today and I want to alert you that I'm going to be  
24       out of town.

25              Starting tomorrow, I'll be in South Carolina on an

1 Alcohol, Tobacco and Firearms case. And then I'm going up  
2 to Indiana to visit my daughter. So I'm going to be out of  
3 town starting tomorrow and I won't be back actually in the  
4 office until the 4th of April. Chief Judge Sturme will be  
5 here and will be able to handle anything of an emergent  
6 nature and I wouldn't expect that that would happen.

7 I see the way that the issues here, there's  
8 basically three factual issues and each of those three  
9 factual issues apply to each of the 15 applications and  
10 there is a special temporary authority with respect to those  
11 stations. So in one sense it's a rather, it's rather  
12 simplistic in terms of how it can be approached. I  
13 understand when we get into cross examination, I may rue  
14 those words. But in terms of the structure of the  
15 litigation of this case, it should be very capable of  
16 keeping it under control.

17 So you've given me what I need. You've given me  
18 dates and you've given me things to do. Is there -- well,  
19 let me make one other preliminary comment. That is I take  
20 it that settlement is not in the cards in a situation like  
21 this. We've got misrepresentation/candor that we're going  
22 to have to resolve no matter how we do it, whatever else we  
23 do with this case. So I'm not expecting that you're out  
24 discussing settlement at this time certainly.

25 Is there anything else now that anybody else wants

1 to say with respect to what we're going to do this morning?

2 Yes, sir.

3 MR. BECKNER: Bruce Beckner for Time Warner.

4 There's a couple of other matters, Your Honor, that I'd like  
5 to alert you to that are not on the report.

6 JUDGE SIPPEL: Thank you.

7 MR. BECKNER: First, your pre-hearing conference  
8 order directed us not to file interrogatories without your  
9 permission. And with all due respect to you, I think that  
10 limited interrogatories would be useful in moving the case  
11 along, primarily directed towards finding out who's who.

12 JUDGE SIPPEL: I agree. I agree and I'm going to  
13 get to that.

14 MR. BECKNER: Okay.

15 JUDGE SIPPEL: Everything that's on your joint  
16 report I'm going to, as I say I'm ready to rule on. And I'm  
17 favorably impressed with everything that's there.

18 MR. BECKNER: The second thing that I want to  
19 mention is that we have prepared in draft form and I'm going  
20 to circulate in a day or so a proposed stipulated protective  
21 order which will govern the use of disclosure of all the  
22 discovery materials in this case. And by that I mean  
23 interrogatory answers if any, documents produced and  
24 deposition transcripts. Because I anticipate that at least  
25 for Liberty's side they will be concerned about the impact



1 on the business of publicity of some of this material. And  
2 we want to forestall those concerns at the outset.

3 So if it's all right with you, we're going to be  
4 circulating the proposed draft to everyone else with the  
5 idea that we hope we can come up with an agreed upon order  
6 to present to you, probably when you return on the 4th that  
7 will again if we can all agree on its terms facilitate fast  
8 discovery.

9 JUDGE SIPPEL: What does the Bureau have to say  
10 about that?

11 MR. WEBER: We've not yet seen a draft of their  
12 order. However, the Bureau has entered it into similar  
13 orders previously where parties are concerned about what  
14 they're turning over in discovery becoming open in public  
15 and the Bureau has entered into such agreements. And at  
16 this point we'd be willing to entertain such a proposal.

17 JUDGE SIPPEL: All right. Here's where I come out  
18 on it. Basically, I don't have any problem with the going  
19 forward in discovery and respecting the confidentiality,  
20 particularly documents which may never need to see the light  
21 of day. But once we get into putting these things into  
22 evidence, this is a public hearing. They're going to come  
23 in if they're relevant.

24 MR. BECKNER: The proposed order that we drafted  
25 regulates only discovery and expressly does not purport to

1 regulate anything that happens at the hearing. Because we  
2 understand obviously that the question of public  
3 availability of evidence at the hearing is -- this is solely  
4 directed towards discovery and not towards anything that  
5 relates to the hearing.

6 JUDGE SIPPET: All right. In principle, I don't  
7 have any problem with that. I want to see, of course, what  
8 it looks like. And again as a general proposition, unless  
9 there's a privilege involved with the document of some sort,  
10 I wouldn't expect to see the documents in discovery anyway.  
11 Or a motion to produce or something. Of course, something  
12 of that nature.

13 But as a general principle it's going to be between  
14 counsel, between parties. And, you know, I think that in  
15 situations like this that protection of business secrets are  
16 a good idea.

17 MR. BECKNER: The third matter I want to bring to  
18 your attention, and I'm not sure from your pre-hearing order  
19 exactly what you know and that is in the context of document  
20 requests. As we are doing with the interrogatories, we will  
21 also do with document requests. And that is we will work  
22 with the other parties to avoid duplicating requests.

23 One of the things that's going to come up very  
24 quickly is the so-called internal audit report that Liberty  
25 prepared some time ago and furnished the FCC last August.

1 JUDGE SIPPEL: I understand that's in the courts  
2 still, is that right?

3 MR. BECKNER: We don't have it. Time Warner does  
4 not have that document. Now, the FCC has said we're  
5 entitled to it, but they've stayed their decision pending  
6 Liberty's application for a stay in the D.C. Circuit. And  
7 that application is still before the D.C. Circuit. I am  
8 frankly surprised that the Court hasn't ruled on Liberty's  
9 application, but they haven't.

10 I don't know that the report itself is all that  
11 important. But the report I think creates issues that are  
12 going to be important in the proceeding, primarily having to  
13 do with attorney/client privilege and the scope of the  
14 privilege and so on. Among other things, the Commission  
15 ruled that the report was not protected by attorney/client  
16 privilege.

17 I'm just alerting you to that situation as I think  
18 I ought to. I'm not suggesting that you do anything about  
19 it or we're not asking you to do anything about it at this  
20 moment. But I wanted to make clear for you that we do not  
21 have this internal audit report.

22 Although the Commission has said we're entitled to  
23 it and the reason we don't is because there's a Commission  
24 stay which was why Liberty, so that they could ask the Court  
25 for a stay which they've done, and they did it in a timely

1 manner. And the Court just hasn't ruled.

2 I would say that there might come a time when we do  
3 apply to you for some sort of further relief regarding that.  
4 We did inform the Court as soon as this matter was  
5 designated for hearing, we informed the Court that it was  
6 designated for hearing and sent to the Court a copy of the  
7 hearing designation order hoping that that would --

8 JUDGE SIPPEL: Good.

9 MR. BECKNER: -- stir them to action.

10 JUDGE SIPPEL: Good. I think that, I have strong  
11 feelings about that report. I think that should be here.  
12 That should be with counsel. Now, I understand that there  
13 may be some irrelevancies in it. In other words, I said at  
14 the outset what the issues are here is 15 applications,  
15 three substantial issues of fact. Anything that's in that  
16 report that's relevant to those applications or issues  
17 should be with counsel.

18 Now, I obviously can't control what's being  
19 litigated in the federal courts. But it's been all the way  
20 up to the staff up to the Commission. And I can't, I can't  
21 help but be convinced that there's relevant evidence there.

22 MR. HOLT: Your Honor, if I could interject here.

23 JUDGE SIPPEL: Yes, sir.

24 MR. HOLT: Based on my reading of the papers, I  
25 understand that the central issue before the Court and the

1 issue that was addressed by the Commission was the  
2 disclosure of the internal audit report publicly generally.  
3 The Commission ordered that the internal audit report be  
4 made available to the public and that ruling was appealed to  
5 the Court. I believe that it's within your discretion to  
6 make that internal audit report available to the parties in  
7 this litigation subject to a protective order contingent on  
8 what the Court does which would be entirely consistent with  
9 keeping the document from being disseminated to the public.

10 JUDGE SIPPEL: Well, Mr. Pettit or Mr. Beckner.

11 MR. BEGLEITER: Let me respond to that, Your Honor.  
12 I don't believe that that's correct. If we take a look at  
13 the memoranda opinion and order dated January 26th by the  
14 FCC, in paragraph three they summarized the grounds for the  
15 denial of our request for confidentiality. And the very  
16 first ground, the nominated first, is that there was no  
17 basis to withhold any information from Time Warner.

18 Rather, Time Warner was entitled to access all the  
19 materials filed by Liberty with its August 14th, 1995  
20 submission in order to allow it to effectively participate  
21 as a party in the licensing proceeding. That's the very  
22 first ground and that's one of the grounds that we are, we  
23 are appealing to the D.C. Circuit.

24 MR. HOLT: Your Honor, if I may respond. Access to  
25 Time Warner would have been granted pursuant to general

1 public disclosure. And the issue that Liberty had raised in  
2 defense of keeping the document confidential was that if  
3 public disclosure was mandated, Time Warner would gain  
4 access. So Time Warner's access did become an issue, but as  
5 part of the general issue of public disclosure.

6 So, again, it's my belief that it would be entirely  
7 consistent for you to make the internal available to the  
8 counsel in this case early in the proceedings so we can move  
9 forward with discovery subject to a protective order that  
10 would prevent it from being disseminated publicly until the  
11 Court rules on Liberty's application.

12 MR. BECKNER: Your Honor.

13 JUDGE SIPPEL: Mr. Beckner.

14 MR. BECKNER: Mr. Beckner for Time Warner. I  
15 really, as I told you a few moments ago, I said that we  
16 might in the future come to you for some sort of relief.  
17 And the reason that I said in the future is because I wanted  
18 to get this protective order in place before we made that  
19 request.

20 And I agree with the general thrust of Mr. Holt's  
21 comments in the sense that the Commission's decision by its  
22 terms grants us the right to have that report  
23 unconditionally. And, and, and what we're now, what we're  
24 coming to you for is in essence the right to have the report  
25 subject to certain conditions which would be embodied in the

1 protective order.

2           What I'd like to suggest is that let's get the  
3 order in place and then we'll come to you and ask for that  
4 document subject to the protective order that's in place.  
5 And at that point, I think the folks from Liberty would be  
6 in a position to respond, you know, in a specific way to the  
7 request. I certainly agree with Mr. Begleiter's comment  
8 that the Commission's decision refers to a public disclosure  
9 of the report and an unconditional disclosure of the report  
10 to Time Warner for purposes of litigating the licensing  
11 proceeding. But what we are talking about would be in  
12 effect a conditional disclosure to Time Warner or to just  
13 Time Warner's counsel that we would ask you for. But I  
14 think the best thing to do if it's all right with you is to  
15 get the protective order in place and then we'll come to you  
16 and ask for it after that protective order's in place. And  
17 at that point, I think the issues will be framed more  
18 precisely and it will help you make the decision if we have  
19 it that way.

20           JUDGE SIPPEL: That's the way the motions generally  
21 come to me when you're ready to give it to me.  
22 Mr. Begleiter, what's your -- anything that you can add to  
23 this? I mean, I'm not pressing you on this, but I would  
24 think that this would be something that -- you know what my  
25 general views are on this. I'll rule on what I think they

1 ought to be obviously when it comes down to the crunch.

2 But I would certainly like to see you side of the  
3 table talking to these people if there's any midway that  
4 this can be worked out. What I'm talking about is taking  
5 that audit report and getting the relevant information out  
6 of it and giving it to the lawyers in this case who are  
7 going to be working on it. That's all I'm asking. I mean,  
8 I'm not asking that the whole thing be turned over to the  
9 public or anything like that.

10 MR. BEGLEITER: Well, Your Honor, a good deal of  
11 that information which is relevant is we believe privileged.  
12 The information that is necessary for this hearing, has  
13 either already been admitted by Liberty. We've admitted,  
14 Your Honor, as you understand to the premature activation of  
15 this. We've admitted it. We're not backing off that  
16 admission. We told that last week. We'll admit to that.

17 JUDGE SIPPEL: And there's conflicting statements  
18 that were filed in two jurisdictions.

19 MR. BEGLEITER: Yeah, we'll explain those. But  
20 we've admitted to the major, I think to that particular  
21 aspect of the case. With regard to relevant information  
22 that is contained, that is necessary for this hearing, we  
23 believe that that information can be easily gotten through  
24 the normal discovery devices. We're going to be  
25 cooperative. We're going to give information that is, that



1 is necessary. There's no denial here on the charge.

2 JUDGE SIPPEL: The Commission wants the case  
3 expedited. This is what I'm thinking. It just makes sense  
4 to me. I'm not trying to argue principal. It just makes  
5 very practical sense. Somebody has taken a lot of time and  
6 effort to get in there and really get the facts and pull it  
7 all together. And, you know, we'd all like to know what the  
8 facts are because then we can, you know. I mean, if I have  
9 that kind of information with the parties, there's a lot of  
10 this other discovery that maybe I can just cut right off,  
11 say you've already got that.

12 MR. BEGLEITER: Well, Your Honor, we'll certainly  
13 consider that. But our view, if I may, I wasn't really  
14 planning to do this today, but our view is that we gave this  
15 document to the enforcement people, August 14th, with the  
16 qualified assurances, qualified of the regulations, that any  
17 information given voluntarily. We say it's voluntary. The  
18 Commission says it's not. And I believe that we will prove  
19 to the D.C. Circuit that it's obviously voluntary. But  
20 that's not for today.

21 We gave that information. We in essence, we gave  
22 it for the purpose of assisting the enforcement, not for the  
23 purpose of the applications. We never said we're giving you  
24 a -- we're giving you this confidential report. Give us the  
25 applications or grant us the stays. We never said that.

1           We said we know there's a problem here. We're  
2 giving this to you, much the same way in a criminal context  
3 a company might make a report to the U.S. Attorney or to the  
4 local District Attorney. But we have that expectation just  
5 like any other corporation would, that that is going to  
6 remain within the law enforcement branch of the government.

7           Certainly if there was an independent civil action,  
8 and we'll have cases that will show involving the same  
9 issues, it will be difficult to compel a party to give that  
10 up to the -- in the civil case and we think this is really  
11 the same thing.

12           We've given it to enforcement. We've opened up all  
13 of the embarrassing aspects of this. We gave it to assist  
14 them. And no we're being told you've got to give it to our  
15 primary, really our only competitor. The competition, as  
16 Your Honor will hear later on, has been vicious.

17           So we are really, I mean, at this point we will  
18 have to be, you know, we are waiting for word from the  
19 D.C. Circuit as to whether or not we're going to have to  
20 turn this over. The SEC, of course, is barred from doing  
21 that. And we feel that there should be no compulsion on us  
22 at this time to turn that document over to our competitor.

23           JUDGE SIPPEL: Well, you know, but I want to say  
24 that I think that this is -- I disagree with your statement,  
25 your argument, to the extent that you're saying that this

1 is, this proceeding is very much akin to a civil action  
2 between private parties. It's not. I mean, this is the,  
3 this is the key regulatory agency that's concerned about  
4 it's whole licensing program. What happens here can effect  
5 what maybe happens in the industry.

6 So, I mean, it is a problem and it's different than  
7 a civil action where people are looking for money because of  
8 some deal that went bad. And there's a lot of public  
9 interest in the situation here that's not going to be  
10 present in those kinds of cases. I'm just sliding back to  
11 where I started on this.

12 And I didn't want to, this was not my idea to make  
13 this the focus of the conference this morning because I  
14 again want to comment all the counsel for having cooperated  
15 in putting that report together. But what I'm left with is  
16 that the Commission wants the case moved and it just seems  
17 to me that there is out there a good piece of information  
18 that all of us could use to move the case along. Subject,  
19 of course, to what you're saying.

20 I'm sensitive to the fact that you've got  
21 competitors here. But this could be done with an in camera,  
22 you know, you could first, you could mask out those things  
23 which you don't think are relevant or those things which you  
24 need protection on.

25 I can review it in reviewing a protection order. I

1 can review the full document with what you want to pare out  
2 and this can be done in a very orderly fashion. And  
3 hopefully, it could be used to facilitate. Now, if I'm  
4 wrong, I'm wrong. But that's how I see it now without  
5 knowing any further information.

6 So I'm asking you to, all I'm asking you to do is  
7 think about what I'm saying. I don't want you to, I'm not  
8 pushing anything here that would prejudice your stay, your  
9 argument or your status before the Federal Courts on this  
10 issue.

11 But I have no problem at all with the Federal  
12 Courts being told what my concerns are and what my interests  
13 are on behalf of the Commission to get this information  
14 available for use in this case insofar as it's relevant.

15 MR. PETTIT: If I may, Your Honor, we'll certainly  
16 take that under advisement.

17 JUDGE SIPPEL: Thank you.

18 MR. PETTIT: And I think the D.C. Circuit is fully  
19 aware of what's going on in this case. I assume that the  
20 first step is going to be perhaps in the process of  
21 Mr. Beckner's draft protective order. So I guess we will  
22 all wait to see that.

23 JUDGE SIPPEL: That's fine. And i'll look to the  
24 other side too. I mean, if this, if you end up cooperating  
25 and turning over information which could arguably be, to

1     which a privilege could be asserted, I would be expecting  
2     the other side to turn over relevant privileged information  
3     as well. I mean I think that, you know, they talk about  
4     all of these procedures to move hearings along. Boy,  
5     there's one way to do it is to get rid of the privileges.  
6     But that's a very broad statement I understand in the  
7     context of the case. Not across the board obviously.

8             Okay. Is there anything else? Does the Bureau  
9     want to add anything to this?

10            MR. WEBER: At this time, Your Honor, I think this  
11     is really a battle the Bureau doesn't want to get in the  
12     middle of and we believe is also little premature. The  
13     Bureau like everybody else is a little surprised the Court  
14     has not acted yet. We expected a very quick decision from  
15     the Court which we have not received.

16            We still think a decision is probably eminent and  
17     because no requests for documents have even been filed in  
18     this proceeding, I think we may be a little bit early  
19     battling over whether or not a particular document has been  
20     or should have been turned over yet. And we'll wait to see  
21     whether the Court acts prior to the close of discovery and  
22     what happens when document requests are filed and how  
23     Liberty responds or fails to respond to those requests.

24            JUDGE GIBSON: Well, that's true. This could all  
25     be moved out really by the time we get into the real thick

1 of discovery.

2 MR. PETTIT: Or, Your Honor, further complicated.

3 JUDGE SIPPEL: Or further complicated.

4 MR. PETTIT: We were expecting a quick decision as  
5 well. I don't think we were expecting the same decision,  
6 however. Which may certainly complicate the proceeding.

7 JUDGE SIPPEL: Okay, Mr. Pettit. No, this is,  
8 again, I didn't expect to spend this much time on it because  
9 this is just something that's going to have to wait its  
10 turn. But since it has been raised, I wanted to get my  
11 views out right up front.

12 Let me ask one other question about this audit  
13 report thought and one observation. It comes to mind a very  
14 similar like this. I haven't gone back and read the cases  
15 and all. But in the RKO case, I think that's out of the RKO  
16 case, really surfaced.

17 It was through an SEC investigation on some kind of  
18 illegal business that was being done overseas by the holding  
19 company. There was litigation in the courts about whether  
20 or not the SEC investigation could be turned over for use in  
21 the Commission's cases. And I think, I know that eventually  
22 information did get, was made available.

23 I'm not so sure as to whether or not there was a  
24 wrinkle in that of how current the information was and  
25 whether there were competitors that were, whether that

1 competitor interest or issue was in that case to the extent  
2 that it is here. But I think that there's precedent for it.

3 I mean, I really don't think that these reports are  
4 sacrosanct. They have to be handled very carefully, but I'd  
5 just like to see it moved.

6 MR. WEBER: We have seen the report, Your Honor.

7 JUDGE SIPPEL: Okay. All right. That's just a  
8 comment. The other question I have is has the Bureau, you  
9 said that this was turned over for purposes of FCC  
10 enforcement, it was voluntarily turned over. Has the Bureau  
11 counsel seen this report? I mean, are you all familiar with  
12 it? Or is this someplace outside of your --

13 MR. WEBER: We have seen the report.

14 JUDGE SIPPEL: You have seen the report?

15 MR. WEBER: Yes.

16 JUDGE SIPPEL: So part of the trial counsel has  
17 seen it and others have not. Now, there's a twist.

18 MR. PETTIT: I think it comes from the difficulty  
19 of having sort of a separated trial staff after the hearing  
20 designation order.

21 MR. WEBER: We're not a separated trial staff,  
22 however.

23 MR. PETTIT: You're certainly separated from the  
24 Commission, I assume.

25 MR. WEBER: The entire Bureau is, not just, not

1 just the staff present.

2 JUDGE SIPPEL: In discussions we've had with trial  
3 staff, we've gotten assurances that there's going to be no  
4 use of that document that we accept those assurances in this  
5 proceeding.

6 JUDGE SIPPEL: Well, I will issue that instruction  
7 right now. But it just strikes me as being kind of a, I  
8 mean, this is a -- it just puts a little different twist on  
9 this because they're going to be participating at  
10 depositions just as much as all the other parties are going  
11 to be participating in depositions. And I don't know how  
12 you divide your, how you divide your mind that way in asking  
13 questions. But I don't know, I don't know, I can't say  
14 anything more except that.

15 But again, my instruction is you're not to share  
16 that information until there's been an order from either the  
17 Commission or a Court or until you've been instructed to do  
18 so. You're not to share that information with your  
19 colleagues on this case in a sense. Because you are both  
20 representing the same, you're both after the same  
21 information, the same factual issue. I mean, your interests  
22 are definitely combined in terms of once we're into  
23 litigation. Okay. Why don't I move onto -- yes, Mr. Holt?

24

25 MR. HOLT: I wanted to move onto another matter if



1 you were intending to head in that direction.

2 JUDGE SIPPEL: Well, I'm going to, I'll tell you  
3 what I'm going to do is I'm going to go right into an order  
4 that I'm prepared to issue today and it's based on what  
5 you've given me in terms of dates and what you're going to  
6 do. Now, if you have something preliminary to that or over  
7 and above that and you want to raise it now, I'll listen.

8 MR. HOLT: I think it's preliminary, Your Honor, in  
9 the nature of a housekeeping matter. Cablevision of Hudson  
10 County, Inc. appears to have been inadvertently omitted from  
11 the hearing designation orders of party.

12 The petition to deny a condition to grant  
13 Liberty's, actually three of Liberty's applications that  
14 ultimately were designated for hearing was filed jointly by  
15 Cablevision of New York City - Phase I and Cablevision of  
16 Hudson County, Inc.

17 If Your Honor would like, I have date stamped  
18 copies of that motion which I can circulate to each of the  
19 parties and to the Court Reporter if you feel it necessary.  
20 It appears that in the HDO, Cablevision of Hudson County was  
21 not designated as a party and it appears that that was  
22 inadvertent.

23 And so we would move under 1.223 of the  
24 Commission's rules that Cablevision of Hudson County, Inc.  
25 be made a party to the proceeding.